

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**CYNTHIA L. FOSTER**  
Claimant

VS.

**JOHNSON COUNTY**  
Respondent  
Self-Insured

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Docket No. 250,689

**ORDER**

Respondent appeals the September 6, 2001 Award of Administrative Law Judge Julie A.N. Sample. Claimant was awarded a 77 percent permanent partial general body disability, computed upon a 59 percent task loss coupled with a 95 percent wage loss. Respondent contends the Administrative Law Judge erred in finding a greater task loss than is justified and in failing to impute a wage to claimant after respondent argued claimant failed to put forth a good faith effort to find a job, post injury. The Appeals Board (Board) held oral argument on March 12, 2002.

**APPEARANCES**

Claimant appeared by her attorney, Michael R. Wallace of Shawnee Mission, Kansas. Respondent appeared by his attorney, Eric T. Lanham of Kansas City, Kansas. There were no other appearances.

**RECORD AND STIPULATIONS**

The Board has considered the record and adopts the stipulations contained in the Award.

**ISSUES**

- (1) What is the nature and extent of claimant's disability?
- (2) Is claimant entitled to reimbursement of certain medical expenses totaling \$145.41?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary record filed herein, the Board finds the Award of the Administrative Law Judge should be modified with regard to claimant's wage loss, but affirmed in all other regards.

Claimant, 39 years old at the time of the Regular Hearing, had worked as a paramedic for Johnson County for 11 years. On March 30, 1998, she suffered an injury to her low back while using a pair of bolt cutters, performing her paramedic duties. Claimant was treated and ultimately referred to Glenn M. Amundson, M.D., who examined claimant and diagnosed multiple levels of degenerative disc disease at L4-5 and L5-S1. Claimant underwent a two-level intradiscal electrothermal treatment which anesthetizes the nerves in the outer part of the disc, thereby hopefully providing pain relief. Claimant was found to be at maximum medical improvement on February 25, 2001, and released to return to work in the light physical work category with occasional lifting restricted to up to 20 pounds. Claimant was also instructed to avoid repetitive bending, pushing, pulling, twisting or lifting activities on anything other than an occasional basis. Respondent was unable to accommodate those restrictions.

Claimant was referred to Edward J. Prostic, M.D., an orthopedic surgeon in Overland Park, Kansas, at the request of claimant's attorney. He examined claimant on January 23, 2001. Dr. Prostic agreed with the restrictions set forth by Dr. Amundson. Dr. Prostic was provided a copy of a work task performance work sheet prepared by Michael J. Dreiling. Of the ten tasks on the sheet, Dr. Prostic opined claimant was unable to perform seven, for a 70 percent loss of tasks.

Dr. Amundson had been given a task list prepared by Gary Weimholt. Of the eleven tasks on the list, Dr. Amundson felt claimant incapable of performing four, for a 36.36 percent loss of tasks. The Administrative Law Judge, in evaluating the two task lists, concluded that claimant had suffered a 59 percent task loss as a result of her injuries with respondent. The Board finds this task loss percentage to be credible and adopts same as its own.

After being released to return to employment, claimant attempted to find suitable employment within her restrictions. As a result of her job search, claimant was only able to locate a part-time position paying \$13 per hour as a laboratory clinician at a local community college. This job required she work at least 20 hours per month. Claimant was only able to work up to 12 hours per week.

While claimant contended she put forth a good faith effort to obtain employment, when asked regarding the number of contacts she made from her February 2001 release

to the regular hearing on June 14, 2001, claimant advised she had contacted fifteen employers but could only name two.

Claimant was placed with Corvel Corporation for assistance in obtaining a post-injury job. During at least one interview for a medical assistant opening, claimant advised the potential employer, who was apparently interested in her abilities, that she could only work part time. As the position was full time, claimant was not hired.

Mr. Weimholt, after interviewing claimant, concluded that claimant was highly employable within her restrictions, but "demonstrated a lack of interest and motivation for pursuing other alternative occupations that she is qualified for and has been self-limiting in her employment search."

K.S.A. 1997 Supp. 44-510e(a) defines permanent partial general disability as:

. . . the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury.

In considering whether claimant is entitled to a wage loss, the Board must determine whether claimant has made a good faith effort to obtain post-injury employment. In Copeland v. Johnson Group, Inc., 24 Kan. App. 2d 306, 944 P.2d 179 (1997), the Court of Appeals held that if a claimant, post injury, does not put forth a good faith effort to obtain employment, then the trier of fact is obligated to impute a wage based upon the evidence in the record as to claimant's wage-earning ability.

In this instance, claimant, while alleging to have attempted a substantial job search, does not present sufficient evidence to convince the Board that she has put forth a good faith effort. She has apparently self-limited herself to a part-time position with little or no effort on her part to improve her wage-earning potential.

While claimant has limited herself to a part-time position, no physician limited her to part-time work.

The Board finds claimant has not put forth a good faith effort to find appropriate employment. The Board is, therefore, obligated to impute a wage based upon her post-injury ability to earn wages. Mr. Dreiling and Mr. Weimholt provided their opinions regarding claimant's wage-earning ability. These opinions range from \$497 a week to \$714 a week. In claimant's current position, she is earning \$13 per hour while working part-time.

The Board, in finding claimant not limited to part-time work, will impute a \$13 per hour wage based upon a 40-hour week which computes to \$520 per week. This results in a wage loss of 48 percent when compared to claimant's average weekly wage of \$993.64.

K.S.A. 1997 Supp. 44-510e obligates that both the wage and task loss be averaged in determining a work disability. In comparing claimant's 48 percent wage loss with her 59 percent task loss, the Board finds claimant entitled to a 53.5 percent permanent partial disability.

Claimant requested reimbursement for \$145.41 in medical expenses. Respondent provided no evidence to contradict claimant's evidence that these expenses were related to the injury. The Board finds the decision by the Administrative Law Judge to award reimbursement to claimant for the expenses in the amount of \$145.41 to be appropriate.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Julie A.N. Sample dated September 6, 2001, should be, and is hereby, modified, and claimant is entitled to a permanent partial disability of 53.5 percent for the injuries suffered on March 30, 1998, while employed with respondent.

Claimant is entitled to 69.8 weeks temporary total disability compensation at the rate of \$351 per week totaling \$24,499.80, followed by 192.71 weeks permanent partial disability compensation at the rate of \$351 per week for a 53.5 percent permanent partial disability totaling \$67,641.21, for a total award of \$92,141.01.

As of April 23, 2002, there would be due and owing to claimant 69.8 weeks temporary total disability compensation at the rate of \$351 per week totaling \$24,499.80, followed by 142.34 weeks permanent partial disability compensation at the rate of \$351 per week totaling \$49,961.34, for a total due and owing of \$74,461.14. Thereafter, claimant is entitled to an additional 50.37 weeks permanent partial disability compensation at the rate of \$351 per week totaling \$17,679.87 until fully paid or until further order of the Director.

In all other regards, the Award of the Administrative Law Judge is affirmed insofar as it does not contradict the findings and conclusions contained herein.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 2002.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Michael R. Wallace, Attorney for Claimant  
Eric T. Lanham, Attorney for Respondent  
Julie A.N. Sample, Administrative Law Judge  
Philip S. Harness, Director